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FILED  
DEC 21 2012  
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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EBATES PERFORMANCE MARKETING,  
INC., a Delaware corporation,

Plaintiff,

v.

INTEGRAL TECHNOLOGIES, INC., a  
Georgia corporation,

Defendant.

Case No.

C12-6488

YGR

COMPLAINT FOR COPYRIGHT  
INFRINGEMENT, TRADEMARK  
INFRINGEMENT, DILUTION, UNFAIR  
COMPETITION, AND FALSE  
ADVERTISING AND REQUEST FOR  
TRIAL BY JURY

1 Plaintiff Ebates Performance Marketing, Inc. (“Ebates” or “Plaintiff”) brings  
2 this action to enjoin Integral Technologies, Inc.’s (“Defendant”) unauthorized and  
3 infringing derivative work and use of Plaintiff’s famous copyrighted and trademarked  
4 MAXWELL CASH character (the “MAX CASH Character Mark”) and EBATES Logo  
5 and to enjoin certain statements made by Defendant relating to Ebates’ payment policy.  
6 Ebates seeks permanent injunctive relief and damages under the laws of the United States  
7 and the State of California and alleges on knowledge as to itself and its own acts, and on  
8 information and belief as to all other matters, as follows:

9  
10 **NATURE OF ACTION**

11 1. Ebates is the leading online shopping cash back loyalty program in  
12 the United States.

13 2. Ebates has, since at least as early as 1999, been offering cash back  
14 rewards for shopping at Ebates-affiliated merchants.

15 3. Defendant has been improperly using the EBATES Logo and an  
16 unauthorized version of the MAX CASH Character Mark in connection with a website  
17 providing a cash back loyalty program throughout the United States.

18 4. Defendant’s use of the EBATES Logo and the MAX CASH  
19 Character Mark—updated to wear a pair of “Groucho Marx” glasses—in connection with  
20 a business model directly competitive with Plaintiff’s business, is unauthorized and  
21 unlawful under § 43(a) of The Lanham Act.

22 5. Defendant’s use of the MAX CASH Character Mark with “Groucho  
23 Marx” glasses for non-parody commercial advertising purposes represents an  
24 unauthorized and unlawful violation of The Copyright Act.

25 6. Defendant’s misleading statements made in connection with its  
26 comparative advertising claims are unlawful under § 43(b) of The Lanham Act.

**PARTIES**

7. Plaintiff Ebates is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business in San Francisco, California.

8. On information and belief, defendant Integral Technologies, Inc. is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Atlanta, Georgia.

**JURISDICTIONAL STATEMENT**

**Jurisdiction**

9. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§1400 1331, 1367, and 1338; 15 U.S.C. §§ 1116 and 1125; and 17 U.S.C. §501.

10. The Court has personal jurisdiction over Defendant because Defendant transacts business with and within the Northern District of California. California consumers may access Defendant's website and make purchases using Defendant's website.

11. Defendant is engaged in, and its activities substantially effect, interstate trade and commerce and California consumers.

12. The Court has personal jurisdiction over Defendant because the acts that are the subject of this Complaint were committed by Defendant in the State of California. Defendant conducts business through its Internet website, <www.bigcrumbs.com>, which is the location where the acts of infringement, false statement, and unfair competition that are alleged in this Complaint occurred.

13. On information and belief, Defendant's website is an active site allowing consumers to join as members and use links on Defendant's website to visit merchant sites and shop online. Defendant's website is more than a passive website; Defendant's website actively recruits consumers to join as members and use Defendant's

1 website as a portal for online shopping. Defendant does business with California residents  
2 and businesses.

3 14. By using Defendant's website, California consumers can expect to  
4 receive a payment from Defendant in the amount of cash back they have earned. Attached  
5 hereto as Exhibit A is a true and correct copy of the relevant pages from Defendant's  
6 website, including defendant's terms of services.

7 15. On information and belief, Defendant's website is available to  
8 California consumers. California consumers are able to join Defendant's website and use  
9 the site to visit merchant sites and make online purchases. Therefore, Defendant is doing  
10 business in this judicial district, has substantial contacts with the State of California, and is  
11 purposefully availing itself of the laws of the State of California, and exercising personal  
12 jurisdiction over Defendant is fair and proper.

13 16. On information and belief, Defendant offers its cash back to  
14 consumers via their PayPal accounts. PayPal is a California company. On information and  
15 belief, Defendant also offers links to online retailers that are based in California and  
16 conducts its business through affiliate networks that are based in California. By doing  
17 business with California companies, Defendant is engaged in substantial, purposeful, and  
18 continuous contacts with California businesses subjecting Defendant to the personal  
19 jurisdiction of this Court.

### 20 **Venue**

21 17. Venue is proper in this judicial district pursuant to §§28 U.S.C.  
22 1391(b) and 1400(a).

### 23 **Intradistrict Assignment**

24 18. Pursuant to Civil L.R. 3-2(c) and General Order No. 44, this case is  
25 properly assigned to any division of this Court, except that pursuant to Civil Local Rules  
26 3-2(g) and 73-1, Plaintiff does not consent to assignment to a Magistrate Judge residing in  
27 the Eureka Division.  
28

**FACTUAL ALLEGATIONS**

19. Ebates provides cash back payments to people who start their online shopping at the Ebates website or otherwise using an Ebates shopping link, such as in an email.

20. Ebates is a TRUSTe certified company.

21. Ebates has received the McAfee SECURE seal for its website.

22. Since its inception in 1999, Ebates has been the leading cash back loyalty shopping program in the United States.

**The EBATES and MAX CASH Trademarks and Copyrights**

23. For over ten years, Ebates has used the EBATES word mark and logo as a trade name, trademark, and service mark to identify its cash back loyalty shopping program. As a result of its longstanding investment in its brand, the EBATES word mark and Logo are well-known and valuable trademarks.

24. Ebates is the owner of U.S. Trademark Registrations for the word marks EBATES (collectively, the “EBATES Registered Marks”) including the following:

a. Trademark Registration No. 3,858,927 issued October 12, 2010 for the mark EBATES for use in connection with Administering a program for enabling participating members to obtain rebates, discounts, cash-back, coupons, vouchers and special offers in the nature of free shipping, dollar or percentage price reductions, free products or services, access to exclusive or limited products and services, and limited time offers for purchasing the products and services of the participating businesses of others,” in Class 35 and “Providing cash and other rebates for making purchases from or applying for a service of participating stores or service providers as part of the Ebates Shopping.com, Inc.'s customer loyalty program” in Class 36. Attached hereto as Exhibit B is a true and correct copy of the certificate of registration. The mark has been used in commerce in connection with the foregoing services since at least as early as April 30, 1999.

b. Trademark Registration No. 3,858,928, issued October 12, 2010 for the mark EBATES for use in connection with “Advertising and

1 marketing services, namely, promoting the goods and services of others;  
2 Customer loyalty services and customer club services, for commercial,  
3 promotional and/or advertising purposes; Administration of a program for  
4 enabling participants to obtain discounts on goods and services and receive  
5 improved goods and services; Membership club services providing  
6 discounts and processing rebates for the goods and services of others;  
7 Promoting the goods and services of others by providing a web site  
8 featuring coupons, rebates, vouchers, price-comparison information, product  
9 reviews, links to the retail web sites of others, and discount information;  
10 promoting the goods and services of others, namely, providing information  
11 regarding discounts, coupons, rebates, vouchers and special offers for the  
12 goods and services of others via the Ebates Shopping.com, Inc. web site and  
13 a network of affiliated web sites, via blogs, via on-line social networks and  
14 via mobile devices,” in Class 35. Attached hereto as Exhibit C is a true and  
15 correct copy of the certificate of registration. The mark has been used in  
16 commerce in connection with the foregoing services since at least as early as  
17 April 30, 1999.

12 c. Trademark Registration No. 3,852,239 issued September 28,  
13 2010 for the mark EBATES for use in connection with consumer coupons  
14 downloaded from a global computer network: in Class 9. Attached hereto  
15 as Exhibit D is a true and correct copy of the certificate of registration. The  
16 mark has been used in commerce in connection with the foregoing services  
17 since at least as early as June 30, 2009.

16 25. All three trademark registrations, collectively the EBATES  
17 Registered Marks are valid and subsisting.

18 26. The registrations and EBATES Registered Marks protect all iterations of  
19 the word mark, including the EBATES Logo.

20 27. Ebates also owns common law rights to the EBATES Logo as a  
21 result of its substantially exclusive and continuous use in connection with consumer  
22 discount and rebate services.

23 28. As a consequence of Ebates extensive sales, advertising, promotion,  
24 and use of the EBATES Registered Marks and the EBATES Logo (together the “Ebates  
25 Marks”), Ebates has developed enormous recognition for its services under the Ebates  
26 Marks and has acquired and enjoys an immensely valuable reputation and tremendous  
27  
28

1 goodwill under these marks.

2 29. Since at least as early as 2002, Ebates has been using the MAX  
3 CASH Character Mark in conjunction with its website, in advertising, and as part of its  
4 marketing efforts for its famous Ebates website.

5 30. The MAX CASH Character Mark is closely associated with the  
6 Ebates brand and is integral to its marketing.

7 31. Since 2003, the MAX CASH Character Mark has been used on cash  
8 back checks that are sent to Ebates members.

9 32. Ebates currently sends over two hundred and twenty-five thousand  
10 checks per quarter to members.

11 33. Ebates has sent over three million checks to members with the MAX  
12 CASH Character Mark since 2003.

13 34. Ebates is the owner of U.S. trademark applications, for the MAX  
14 CASH Character Mark, including the following:

15 a. Serial No. 85/803,578, filed with the United States Patent and  
16 Trademark Office ("PTO") for use in connection with "Consumer coupons  
17 downloaded from a global computer network," in Class 009. Attached  
18 hereto as Exhibit E is a true and correct copy of the application filed with  
the PTO.

19 b. Serial No. 85/803,579, filed with the PTO for use in  
20 connection with "Administering a program for enabling participating  
21 members to obtain rebates, discounts, cash-back, coupons, vouchers and  
22 special offers in the nature of free shipping, dollar or percentage price  
23 reductions, free products or services, access to exclusive or limited products  
24 and services, and limited time offers for purchasing the products and  
25 services of the participating businesses of others; advertising and marketing  
26 services, namely, promoting the goods and services of others; customer  
27 loyalty services and customer club services, for commercial, promotional  
28 and/or advertising purposes; administration of a program for enabling  
participants to obtain discounts on goods and services and receive improved  
goods and services; membership club services providing discounts and  
processing rebates for the goods and services of others; promoting the goods  
and services of others by providing a web site featuring coupons, rebates,



1 vouchers, price-comparison information, product reviews, links to the retail  
2 web sites of others, and discount information; promoting the goods and  
3 services of others, namely, providing information regarding discounts,  
4 coupons, rebates, vouchers and special offers for the goods and services of  
5 others via the Ebates web site and a network of affiliated web sites, via  
6 blogs, via on-line social networks and via mobile devices,” in Class 035.  
7 Attached hereto as Exhibit F is a true and correct copy of the application  
8 filed with the PTO.

9 c. 85/803,580, filed with the PTO for use in connection with  
10 “Providing cash and other rebates for making purchases from or applying  
11 for a service of participating stores or service providers as part of the Ebates  
12 customer loyalty program,” in Class 036. Attached hereto as Exhibit G is a  
13 true and correct copy of the application filed with the PTO.

14 35. Attached hereto as Exhibit H is a true and correct copy of the MAX  
15 CASH Character Mark in the form sought to be registered at the PTO.

16 36. Ebates owns valid copyrights in the MAX CASH Character Mark  
17 and related artwork, including the MAX CASH Original Image as that term is defined  
18 below.

19 37. Ebates owns two Visual Arts copyright applications to register the  
20 MAX CASH Character Mark at the United States Copyright Office. Attached hereto as  
21 Exhibit I and J respectively are true and correct copies of U.S. Copyright Office  
22 applications for the MAX CASH Character Mark, including the MAX CASH Original  
23 Image.

24 38. The MAX CASH Character Mark is widely recognized as being the  
25 “mascot” and cartoon spokesman for Ebates services.

26 39. The MAX CASH Character Mark is used throughout the website and  
27 is the official spokesman of Ebates.

28 40. The MAX CASH Character Mark has been seen on CNN as well as  
ABC- and CBS-affiliate stations.



1           41. The MAX CASH Character Mark is also referenced by third party  
2 consumer sites and in online news articles.

3           42. Ebates has used the MAX CASH Character Mark in various forms,  
4 including an image of him holding a sign with words on it (the "MAX CASH Original  
5 Image"), as set forth in Exhibit J.

6           43. On our about December 11, 2012, Ebates observed Defendant's  
7 website located at <www.bigcrumbs.com>.

8           44. Defendant offers a website that allows consumers to receive cash  
9 back for making purchases through its website ("Defendant's Services").

10           45. Defendant's Services are virtually identical to and competitive with  
11 Ebates' services.

12           46. Ebates observed Defendant's use of an altered version of the MAX  
13 CASH Character Mark on Defendant's website. Attached hereto as Exhibit K is a true and  
14 correct copy of Defendant's home page in which the Defendant's website features the  
15 MAX CASH Original Image holding a sign containing the letter "I," a heart image, and  
16 Defendant's logo, that is meant to reflect the following phrase: "I love BigCrumbs"; and  
17 the image is edited to show the MAX CASH Original Image wearing a pair of "Groucho  
18 Marx" style glasses, as if the character were in disguise (the "Infringing MAX CASH  
19 Mark").

20           47. The MAX CASH Original Image was taken by Defendant without  
21 the knowledge or authorization of Ebates, from a promotion done in conjunction with  
22 Groupon, the social media coupon company.

23           48. The MAX CASH Original Image was copied and altered to show the  
24 character holding an "I love BigCrumbs" sign, and wearing "Groucho Marx" style  
25 glasses, all without Ebates' knowledge or authorization.

26           49. Ebates further observed on Defendant's website use of the EBATES  
27 Logo appearing alongside the BigCrumbs logo to form what looks like a composite mark.  
28

1           50. Defendant's ongoing and unlawful use of the Infringing MAX  
2 CASH Character Mark as well as the EBATES Logo in connection with Defendant's  
3 Services has irreparably harmed Ebates.

4                           **The Comparative Advertising Statements**

5           51. On or about December 11, 2012, Ebates reviewed the comparison  
6 chart located on the Defendant's website in which Defendant makes comparisons between  
7 its service and the Ebates service. Attached hereto as Exhibit L is a true and correct copy  
8 of the relevant pages of the comparison chart from Defendant's website.

9           52. Defendant makes the statement, "You'll save more with less work."

10          53. This statement is calculated to mislead customers into thinking they  
11 have to engage in extra steps to earn or be paid cash back for shopping. Ebates customers  
12 earn and receive cash back with no more work than required to earn and receive cash back  
13 from BigCrumbs.

14          54. Defendant makes the statement, "The overwhelming majority of your  
15 purchases will credit automatically as intended, but it's a fact of life that tracking issues  
16 can happen, whether here or at Ebates. But the difference is that BigCrumbs guarantees  
17 that if you click-through just prior to shopping and the purchase fails to credit  
18 automatically for UNKNOWN reasons, we will provide you with the credit you deserve  
19 as a member courtesy."

20          55. This statement is designed to mislead consumers into thinking Ebates  
21 does not provide consumers with credit when automatic tracking fails, which is patently  
22 false. In fact, Ebates also credits consumers, often in an automated fashion. Indeed,  
23 Ebates has a dedicated location on its website so consumers need not even contact  
24 customer servicer.

25          56. Defendant makes the statement, Plaintiff "Pays small one-time fee  
26 only on select referrals."  
27  
28

1           57. This statement misleads consumers in two ways. First, the statement  
2 suggests that a consumer will make more money under the BigCrumbs system, which is  
3 not accurate. Ebates' one-time payment for a single referral, combined with an additional  
4 bonus for referring multiple new members, can easily amount to more than BigCrumbs'  
5 referral payments based solely on referred member shopping activity. Furthermore,  
6 because Ebates pays referrers not only based on the addition of a new member, but also  
7 upon reaching certain referral quantity thresholds, BigCrumbs' statement that Ebates pays  
8 only once for a referral is false.

9           58. Defendant makes the statement, "Think about it: If the other program  
10 pays you a small one-time fee for referring an active shopper, then they know they'll  
11 recoup that and then some."

12           59. This statement could be accurate with respect to some active referred  
13 shoppers, but it is designed to lead consumers into believing that Ebates always recoups  
14 its money, which is false. In many cases referral fees paid are not recouped by Ebates.  
15 The use of the word "small" in this statement implies that Ebates' referral fees are always  
16 lower than BigCrumbs'. This too is false. Ebates pays members a referral fee of \$5.00  
17 for every friend a member refers to the program that spends at least \$25.00 through  
18 Ebates, including bonuses for reaching certain referral quantity thresholds and occasional  
19 promotional bonuses.<sup>1</sup> If a referred friend does not conduct enough shopping on  
20 BigCrumbs, the referral fee could easily be less than \$5.00 or such higher blended amount  
21 after taking into account Ebates' referral quantity bonus and any applicable referral  
22 promotions.

23  
24  
25  
26 <sup>1</sup> For example, Ebates recently conducted a promotion whereby referrers received \$25 for their first ever  
27 referral.  
28

**FIRST CAUSE OF ACTION**  
**(Direct Infringement of Copyright)**  
**17 U.S.C. §101 et. seq.**

60. Plaintiff repeats and realleges each and every allegation in paragraphs 1 - 59 above, and incorporates them by reference, as if fully set forth herein.

61. Ebates owns or controls valid copyrights in the MAX CASH Character Mark and related artwork, including the MAX CASH Original Image identified in Exhibit I.

62. Plaintiff has properly applied to register the copyright in the MAX CASH Character Mark and the MAX CASH Original Image. The completed electronic copyright applications and deposit materials filed at the U.S. Copyright Office on December 18, 2012 for these works are attached respectively as Exhibit I and J.

63. Without authorization from Plaintiff, Defendant has unlawfully copied, reproduced, distributed, made derivative works of, and displayed Plaintiff's copyrighted works, including that on Exhibit K in violation of the Copyright Act, 17 U.S.C. § 106.

64. Defendant is directly liable for these acts of infringement under the Copyright Act. The Infringing Image resides on servers controlled by Defendant and is displayed on the home page of Defendant's <www.bigcrumbs.com> website.

65. Moreover, Defendant may not claim a parody defense under these circumstances, because Defendant is merely using the Infringing MAX CASH Mark to sell its own products, not as social commentary or critique.

66. The foregoing acts of infringement by Defendant have been willful, intentional and purposeful, in disregard of and indifferent to Plaintiff's rights.

67. As a direct and proximate result of Defendant's infringement of Plaintiff's exclusive right under copyright, Plaintiff is entitled to damages as well as Defendant's profits pursuant to 17 U.S.C. § 504(b).

68. Defendant's conduct is causing, and unless enjoined and restrained by this Court will continue to cause, Plaintiff great and irreparable injury that cannot fully be compensated for or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a preliminary and permanent injunction prohibiting further infringements of its copyright and exclusive rights under copyright.

## **SECOND CAUSE OF ACTION**

### **(Trademark Infringement of a Registered Mark; --Lanham Act §32, 15 U.S.C. § 1114)**

69. Ebates repeats and realleges each and every allegation of paragraphs 1 - 68 above, and incorporates them by reference as if fully set forth herein.

70. Defendant either had actual notice and knowledge, or had constructive notice of Plaintiff's ownership, registrations, and rights in the Ebates Marks pursuant to 15 U.S.C. §1072 prior to Defendant's use of the Ebates Marks on its website.

71. Defendant's unauthorized use of the Ebates Marks on its website falsely indicates to consumers that Defendant's services are in some manner connected with, sponsored by, affiliated with, or related to Plaintiff and Plaintiff's services.

72. Defendant's unauthorized use of the Ebates Marks on its website is also likely to cause consumers to be confused as to the source, nature, and quality of the services Defendant is promoting or selling.

73. Defendant's unauthorized use of the Ebates Marks on its website in connection with the sale of its services allows, and will continue to allow, Defendant to receive the benefit of the goodwill established at great labor and expense by Ebates and gain acceptance of Defendant's services, not based on the quality of those services, but on Ebates' reputation and goodwill.

74. Defendant's unauthorized use of the Ebates Marks on its website in connection with the sale of its services deprives Plaintiff of the ability to control the consumer perception of the quality of the services marketed under the Ebates Marks, and

places Plaintiff's valuable reputation and goodwill in the hands of Defendant, over which Plaintiff has no control.

75. Defendant is likely to cause confusion or to cause mistake, or to deceive consumers or potential consumers in violation of 15 U.S.C. §1014.

76. Plaintiff has been, is now, and will be irreparably injured and damaged by Defendant's trademark infringement, and unless enjoined by the Court, Plaintiff will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which Plaintiff has no adequate remedy at law.

### **THIRD CAUSE OF ACTION**

#### **(Trademark Infringement; False Designation Of Origin/Description--Lanham Act §43(a), 15 U.S.C. § 1125(a))**

77. Ebates repeats and realleges each and every allegation of paragraphs 1 - 76 above, and incorporates them by reference as if fully set forth herein.

78. Ebates has properly used its MAX CASH Character Mark in connection with its consumer services in commerce regulated by Congress since at least as early as March 2002.

79. Ebates has properly used its EBATES Logo in connection with consumer services in commerce regulated by Congress since at least as early as 2001.

80. Defendant's wrongful use of the MAX CASH Character Mark constitutes trademark infringement and is causing or likely to cause confusion, mistake, and deception of the public as to (a) the affiliation, connection, or association of Defendant with Ebates and/or (b) the origin, sponsorship, or approval of Defendant's services, or commercial activities by Ebates, causing irreparable harm to Plaintiff for which there is no adequate remedy at law.

81. Defendant's unauthorized use of the EBATES Logo to create a composite logo that includes the BIGCRUMBS logo falsely suggests its products and services are connected with, sponsored by, affiliated with, or related to Plaintiff, and

1 constitutes false designation of origin under 15 U.S.C. 1125(a).

2 82. The foregoing acts all constitute trademark infringement and false  
3 designation of origin under The Lanham Act, 15 U.S.C. § 1125(a).

4 83. Plaintiff is entitled to a permanent injunction pursuant to 15 U.S.C.  
5 § 1116.

6 84. Pursuant to 15 U.S.C. § 1117, Ebates is entitled to recover (i)  
7 Defendant's profits, (ii) Ebates' ascertainable damages, and (iii) Ebates' costs of suit.  
8 Defendant's willful use of Ebates' MAX CASH Character Mark without excuse or  
9 justification renders this an exceptional case and entitles Ebates to its reasonable attorney  
10 fees.

11  
12 **FOURTH CAUSE OF ACTION**

13 **(Dilution--Lanham Act § 43(c), 15 U.S.C. § 1125(c))**

14 85. Ebates repeats and realleges each and every allegation of paragraphs  
15 1 - 84 above, and incorporates them by reference as if fully set forth herein.

16 86. The MAX CASH Character Mark and the Ebates Marks are famous  
17 and distinctive.

18 87. The MAX CASH Character mark and Ebates Marks became famous  
19 prior to Defendant's commencement of use of the mark; indeed, the fame of Plaintiff's  
20 mark is the reason for Defendant's use.

21 88. Defendant's use of the MAX CASH Character Mark and Ebates  
22 Marks for identical cash back shopping services is likely to cause dilution by blurring or  
23 dilution by tarnishment of the MAX CASH Character Mark and Ebates Marks. For  
24 example, Defendant's use of the Infringing MAX CASH Mark and Ebates Marks is likely  
25 to reduce the distinctiveness of that mark by reducing the general consuming public's  
26 association of the mark solely with Ebates' services.



89. Defendant's wrongful activities have caused Ebates irreparable injury. Ebates is informed and believes that unless said conduct is enjoined by this Court, Defendants will continue and expand those activities to the continued and irreparable injury of Ebates. This injury includes a reduction in the distinctiveness of Ebates' MAX CASH Character Mark and the Ebates Marks and corresponding trust that cannot be remedied through damages, and Ebates has no adequate remedy at law. Ebates is entitled to a permanent injunction pursuant to 15 U.S.C. § 1116 restraining and enjoining Defendant and Defendant's agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the Infringing MAX CASH Mark, the MAX CASH Character Mark, the Ebates Marks, or any colorable imitation thereof.

90. Pursuant to 15 U.S.C. §§ 1117 and 1125(c)(5) Ebates is also entitled to recover (i) Defendant's profits, (ii) Ebates' ascertainable damages, and (iii) Ebates' costs of suit. Defendant's willful use of Ebates' MAX CASH Character Mark and Ebates Mark without excuse or justification renders this an exceptional case and entitles Ebates to its reasonable attorney fees.

### **FIFTH CAUSE OF ACTION**

#### **(Trademark Infringement--Common Law)**

91. Ebates repeats and realleges each and every allegation of paragraphs 1 - 90 above, and incorporates them by reference as if fully set forth herein.

92. The general consuming public of California widely recognizes the MAX CASH Character Mark and the Ebates Marks as designating Ebates as the source of services and/or goods. Ebates has common law trademark rights in the MAX CASH Character Mark and the Ebates Marks under California law.

93. Defendants' wrongful activities in the State of California have caused Ebates irreparable injury. Ebates is informed and believes that unless said conduct is

enjoined by this Court, Defendant will continue and expand those activities to the continued and irreparable injury of Ebates. This injury includes a reduction in the distinctiveness of Plaintiff's MAX CASH Character Mark and the Ebates Marks and injury to Ebates' reputation that cannot be remedied through damages, and Ebates has no adequate remedy at law. Ebates is entitled to a permanent injunction restraining and enjoining Defendant and Defendant's agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the Infringing MAX CASH Mark, the MAX CASH Character Mark, the Ebates Marks or any colorable imitation thereof.

94. Ebates is also entitled to recover (i) Defendant's profits, (ii) Ebates' ascertainable damages, and (iii) Ebates' costs of suit. Defendant's willful use of Ebates' MAX CASH Character Mark and the Ebates Marks without excuse or justification entitles Ebates to its reasonable attorneys' fees.

#### **SIXTH CAUSE OF ACTION**

##### **(Dilution--Cal. Bus. & Prof. Code § 14330 and Common Law)**

95. Ebates repeats and realleges each and every allegation of paragraphs 1 - 94 above, and incorporates them by reference as if fully set forth herein.

96. Defendant's use of the Ebates Mark and the Infringing MAX CASH Character Mark in California (i) has diluted, and on information and belief will continue to dilute, the distinctive quality of the Ebates Marks and the MAX CASH Character Mark and/or (ii) has tarnished, and on information and belief will continue to tarnish, the image of Ebates' MAX CASH Character Mark and the Ebates Marks, in violation of Section 14330 of the California Business and Professions Code.

97. Defendants' wrongful activities in the State of California have caused Ebates irreparable injury. Ebates is informed and believes that unless said conduct is enjoined by this Court, Defendant will continue and expand those activities to the

continued and irreparable injury of Ebates. This injury includes a reduction in the distinctiveness of Ebates' MAX CASH Character Mark and the Ebates Marks and injury to Ebates' reputation as a trusted site that cannot be remedied through damages, and Ebates has no adequate remedy at law. Ebates is entitled to a permanent injunction restraining and enjoining Defendant and Defendant's agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the Ebates Marks and the MAX CASH Character Mark or any colorable imitation thereof.

### **SEVENTH CAUSE OF ACTION**

#### **(Unfair Competition--Cal. Bus. & Prof. Code § 17200 and Common Law)**

98. Ebates repeats and realleges each and every allegation of paragraphs 1 - 97 above, and incorporates them by reference as if fully set forth herein.

99. Defendant's acts, as alleged above, constitute unlawful and/or unfair business practices in violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq.

100. Defendant's acts are unlawful and/or unfair under the UCL because Defendant's use of the Ebates Marks and the MAX CASH Character Mark in California, and Defendant's misleading statements are likely to confuse consumers as to the source, origin, or affiliation of Defendant's services, to dilute the distinctiveness of Ebates' MAX CASH Character Mark and the Ebates Marks, and/or to tarnish the image of Ebates, the Ebates Marks and the MAX CASH Character Mark.

101. Defendant's acts of unfair competition in the State of California have caused Ebates irreparable injury. Ebates is informed and believes that unless said conduct is enjoined by this Court, Defendant will continue and expand those activities to the continued and irreparable injury of Ebates. This injury includes a reduction in the distinctiveness of Ebates' MAX CASH Character Mark and the Ebates Marks and injury to Ebates' reputation that cannot be remedied through damages, and Ebates has no

adequate remedy at law. Ebates is entitled to a permanent injunction restraining and enjoining Defendant and Defendant's agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the Infringing MAX CASH Mark, the MAX CASH Character Mark, the Ebates Marks, or any colorable imitation thereof.

102. As a direct and proximate result of Defendant's statutory unfair competition, Defendant has been unjustly enriched in an amount to be determined at trial.

### **EIGHTH CAUSE OF ACTION**

#### **(False Advertising—15 U.S.C. § 1125(a))**

103. Ebates repeats and realleges each and every allegation of paragraphs 1 - 102 above, and incorporates them by reference as if fully set forth herein.

104. Defendant's acts, as alleged above, constitute false advertising under the Lanham Act, 15 U.S.C. § 1125(a).

105. Defendant has, in connection with goods or services, used false or misleading descriptions of facts, or false or misleading representations of facts, which in commercial advertising or promotion misrepresents the nature, characteristics, or qualities of Ebates' services. Specifically, Defendant's statement, "You'll save more with less work" is misleading.

106. Defendant has, in connection with goods or services, used false or misleading descriptions of facts, or false or misleading representations of facts, which in commercial advertising or promotion misrepresents the nature, characteristics, or qualities of Ebates' services. Specifically, Defendant's representation that "The overwhelming majority of your purchases will credit automatically as intended, but it's a fact of life that tracking issues can happen, whether here or at Ebates. But the difference is that BigCrumbs guarantees that if you click-through just prior to shopping and the purchase fails to credit automatically for UNKNOWN reasons, we will provide you with the credit

1 you deserve as a member courtesy,” is misleading.

2 107. Defendant has, in connection with goods or services, used false or  
3 misleading descriptions of facts, or false or misleading representations of facts, which in  
4 commercial advertising or promotion misrepresents the nature, characteristics, or qualities  
5 of Ebates’ services. Specifically, Defendant’s statement that Ebates “[p]ays small one-  
6 time fee only on select referrals” is patently false.

7 108. Defendant has, in connection with goods or services, used false or  
8 misleading descriptions of facts, or false or misleading representations of facts, which in  
9 commercial advertising or promotion misrepresents the nature, characteristics, or qualities  
10 of Ebates’ services. Specifically, Defendant’s statement, “Think about it: If the other  
11 program pays you a small one-time fee for referring an active shopper, then they know  
12 they’ll recoup that and then some,” is misleading. It is also false to suggest that Ebates’  
13 referral fees are lower than Big Crumbs.

14 109. Defendant’s misleading statements have the tendency to deceive a  
15 substantial segment of its audience.

16 110. Defendant’s misleading statements are likely to influence the  
17 purchasing decisions of the consumer market.

18 111. Defendant’s misleading statements were and are made in interstate  
19 commerce.

20 112. As a result of Defendants’ ongoing misleading statements, Plaintiff  
21 has suffered and continues to suffer substantial injury and have irreparably harmed  
22 Ebates. Ebates is entitled to a permanent injunction restraining and enjoining Defendant  
23 and Defendant’s agents, servants, employees, and all persons acting thereunder, in concert  
24 with, or on their behalf, from using false or misleading descriptions of facts, or false or  
25 misleading representations of facts, which in commercial advertising or promotion  
26 misrepresents the nature, characteristics, or qualities of Ebates’ services.

**PRAYER FOR RELIEF**

WHEREFORE, Ebates hereby requests that this Court:

A. Enter a permanent injunction restraining and enjoining Defendant and Defendant's agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the the EBATES Registered Marks, the EBATES Logo, the Infringing MAX CASH Mark, the MAX CASH Character Mark, or any colorable imitation or confusingly similar variation thereof;

B. Enter a permanent injunction requiring Defendant and Defendant's agents, servants, and employees, and all persons acting thereunder in concert with, or on their behalf, to immediately cease from causing any and all dilution and/or tarnishment of Ebates' MAX CASH Character Mark;

C. Enter a permanent injunction requiring Defendant and Defendant's agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, to immediately cease from using false or misleading descriptions of facts, or false or misleading representations of facts, which in commercial advertising or promotion misrepresents the nature, characteristics, or qualities of Ebates' services;

D. Award Ebates its ascertainable damages, costs, and attorneys' fees;

E. Award Ebates Defendant's profits attributable to Defendant's unauthorized use of the EBATES Registered Marks, the EBATES Logo, and the MAX CASH Character Mark.

F. Impose a constructive trust in favor of Ebates on all profits obtained from Defendant's misappropriation of the EBATES Registered Marks, the EBATES Logo, and the Ebates' MAX CASH Character Mark.

G. Award Ebates all amounts by which Defendant has been unjustly enriched through its use of the EBATES Registered Marks, the EBATES Logo, the MAX CASH Character Mark.

1 H. Award such other and further relief as this Court deems just and  
2 proper.

3  
4 Dated: December 20, 2012

5 O'KEEFE & O'KEEFE LLP

6  
7 By  

8 Garet O'Keefe  
9 Attorneys for Plaintiff  
Ebates Performance Marketing, Inc.




JURY DEMAND

Ebates respectfully requests a jury trial on all issues triable thereby.

Dated: December 20, 2012

O'KEEFE & O'KEEFE

By   
Garet O'Keefe  
Attorneys for Plaintiff  
Ebates Performance Marketing, Inc.

A



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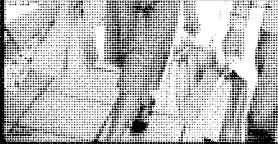
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[Refer](#)

[Learn More](#)

[BigCrumbs vs. Ebates](#)

[CrumbShares](#)



As a member of the BigCrumbs community, you get cash back shopping at major retailers just by clicking your mouse. The best part is that it's super-easy and always FREE.

### Step 1

Create your FREE BigCrumbs account in seconds and start browsing stores and deals listed on BigCrumbs.

### Step 2

Click the provided links to visit our retailers and make your purchases as usual.

### Step 3

Your purchases will credit to your BigCrumbs account at the retailer's listed cash-back rate. BigCrumbs pays cash back monthly.

That's it! It's simple.

[JOIN NOW!](#)

## BigCrumbs Benefits:

**CrumbShares™** - BigCrumbs is the only program that shares the wealth with members upon an acquisition.

**BIG Cash Back Rewards** - Earn the highest overall cash back at top stores.

**Deals & Coupons** - Save even more with deals that include discounts as high as 80% off, free shipping and more.

**Lifetime Referral Commissions** - Instead of a one-time fee, you'll earn available referral commissions whenever people you refer shop. When we profit, you profit!

**My Favorites** - Add retailers to your My Favorites list for quicker access to the stores you love.

**Community** - BigCrumbs has large, active community of people just like you who enjoy trading advice, rating deals, and helping new members.

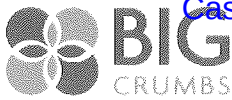
Remember, you can earn even more money when you refer friends and help them save with BigCrumbs! [LEARN MORE](#)

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The term "Etsy" is a trademark of Etsy, Inc. This application uses the Etsy API but is not endorsed or certified by Etsy, Inc.



## Terms of Service

Please read this agreement in its entirety. By registering to participate in the BigCrumbs.com program, you are indicating that you have read this agreement and that you agree to its terms.

Integral Technologies, Inc. ("Integral", "we", or possessively "our"), a Georgia-based corporation, owns and operates the website known as BigCrumbs.com. Integral invites you to participate in the BigCrumbs.com program, with the intent of saving money while shopping online and earning money by referring others to become BigCrumbs.com members.

**1. OVERVIEW.** BigCrumbs.com provides its members with access to shopping at its featured retailers' websites. This access is provided through links on the BigCrumbs.com site that, when clicked, transfer the member to the featured retailers' websites. This action causes purchases subsequently made at these websites to be associated with BigCrumbs.com and the participating member. The retailers, then pay a commission to BigCrumbs.com, which we use to pay members in the form of cash back rebates *and* referral commissions.

**2. MEMBERSHIP TYPES.** Previously, BigCrumbs.com offered two membership types, which were designated *CrumbEarner*<sup>SM</sup> and *CrumbSaver*<sup>SM</sup>. However, on April 2, 2010, BigCrumbs.com consolidated its program into one membership type, designated BigCrumbs.com Member.

All BigCrumbs.com Members earn the same cash back rate, which is listed with each retailer. In addition BigCrumbs.com Members earn referral commissions on the shopping of members whom they directly refer to BigCrumbs.com. Finally, BigCrumbs.com Members also earn referral commissions on the shopping of those referred by their direct referrals.

The amounts earned as referral commissions are also listed beside each retailer.

Only one account of any type is allowed per person. A person may NOT refer members of the same household. Violation of these terms will result in account termination and forfeiture of any monies earned.

**3. REFERRAL LIMITATIONS.** You may refer an unlimited number of new members, who will be placed as your direct referrals.

As a BigCrumbs.com Member, you will be paid a commission on the purchases of your direct referrals. You will also be paid a commission on the purchases of those referred by your direct referrals, without limit to their number.

**4. RECEIVING CREDIT FOR PURCHASES.**

You understand that you must click through from the BigCrumbs.com website to the featured retailers' websites in order to receive credit for your purchases. You may also use any additional methods expressly provided by BigCrumbs.com to receive credit for purchases.

You understand that credits for your purchases may take up to one month to appear on your BigCrumbs.com account, though usually much sooner. You agree that you have read the BigCrumbs.com Tech Check page, accessible from the "Help" link at the top of the BigCrumbs.com website, and that you will make every effort to comply with the technical requirements for receiving credit listed therein.

You understand that gift cards and gift certificates generally do not generate cash back, except where indicated or where a retailer's primary product is gift cards or gift certificates. You also understand that cash back and commissions are computed on the net purchase amount, which does not include taxes or shipping.

**5. PAYMENTS.** BigCrumbs.com pays participating members both cash-back from their own shopping and referral commissions from the shopping of others once per month. At its discretion, and as required by payment processing partners, BigCrumbs.com may apply a minimum payment requirement of \$1.00. Therefore, if your balance due for a particular pay period does not meet this threshold, it may be carried forward to subsequent pay periods, until such time as your total balance due meets or exceeds the threshold.

Purchases are processed one month in arrears to allow for processing returns, exchanges, and other adjustments. This means, for example, that cash back and referral commissions on purchases made in January will be paid in March. February purchases are paid in April, and so on.

Payments are sent on or about the 15th of the month.

**6. PAYMENT METHOD.** BigCrumbs.com currently pays its members by PayPal. This payment method requires that you specify on your BigCrumbs.com account information, an e-mail address that is associated with your PayPal account. Additionally, you must confirm

It is your responsibility to ensure that you have provided accurate and complete information required for BigCrumbs.com to make payment to you. Any payment not received and/or accepted by you within 60 days from the scheduled date of issue will be forfeited.

BigCrumbs.com reserves the right to modify this payment method, including, but not limited to, other forms of electronic payments.

**7. PAYMENT PROCESSING FEE.** BigCrumbs.com will deduct 2% of the payment amount up to a maximum of \$1.00 from each payment as a payment processing fee. This fee is charged to BigCrumbs.com by PayPal and BigCrumbs.com does not profit from this fee.

You understand that there is a \$10,000 single-payment maximum allowed by PayPal. If the amount we owe you exceeds \$10,000 for one pay period, we will break the payment into multiple payments as necessary. This means the above fee will be assessed per payment.

You understand that if you exceed \$600 in payments from BigCrumbs.com during a calendar year, BigCrumbs.com will be required by law to send you a 1099 form. At this point, we will request additional information from you, as required to complete the 1099 form. We will be unable to pay you for any amount exceeding \$600 for any calendar year, until such time as you supply the required information.

**8. STATEMENTS.** On or about the 15th of each month, BigCrumbs.com will create a monthly statement which includes all purchases and revenue-generating transactions made up to and including the month PRIOR TO the previous month, that have not already been credited to your account. BigCrumbs.com will then include in said statement, all unprocessed returns, adjustments, and other negative transactions that occurred up to and including the time of statement creation. The sum of these numbers is the balance due for the statement. If this number is positive, BigCrumbs.com will pay the balance within 2 business days of the statement generation date. If this number is negative, then BigCrumbs.com will subtract this amount from future payments. Monthly statements indicating all transactional and payment information will be provided online through the BigCrumbs.com Account Manager. For example:

1. On or about March 15, 2006 BigCrumbs.com generates a statement for you (provided that you have had some transaction activity on your account).
2. This statement will include purchases and crediting transactions up to and including January 31, 2006 (i.e. the month prior to the previous month).
3. This statement also includes returns and debiting transactions up to and including the time the statement is generated.
4. The sum of (2) and (3) plus any balance forward is the balance for the statement for March, 2006.
5. If this amount is positive, then BigCrumbs.com will make a payment to you within 2 business days.
6. If this amount is negative, then BigCrumbs.com will withhold payment and subtract the amount from subsequent payments until such time as the balance is again positive. BigCrumbs.com will then resume making payments to you as described herein.

You understand that the commission structure for BigCrumbs.com varies by merchant and in some cases by product, and product category for those merchants. BigCrumbs.com agrees to pay you the indicated percentage of the net purchase that it receives on each transaction traceable to your account. We reserve the right to withhold processing and payment for any large purchase(s), until such time as the purchase(s) can be verified. This withholding period shall not exceed ninety (90) days or until the retailer's return policy has expired, whichever is greater. This policy also applies to any purchases that we, at our sole discretion, suspect to be fraudulent for any reason.

**9. CHANGE IN MEMBERSHIP TYPE.** Members who join as CrumbEamers<sup>SM</sup> may *not* change their membership to become CrumbSavers<sup>SM</sup>. However, members who join as CrumbSavers<sup>SM</sup> may change their memberships to CrumbEamers<sup>SM</sup> *one time*, and may not revert back to CrumbSavers<sup>SM</sup>.

**10. QUALIFICATIONS.** To join BigCrumbs.com, you must be at least 18 years of age and you must be a resident of the U.S., U.K., Canada, Australia, or Ireland. Further, membership of any type is limited to one per individual or organization. If you are initiating registration on behalf of an organization, then you represent that you are duly authorized to make such registration on behalf of the organization and that you may enter the organization into a binding agreement. **Violation of any part of these terms will result in immediate termination of your BigCrumbs.com account. Any monies that you have earned either via cash-back from your own shopping or referral commissions, will be forfeited. Further, BigCrumbs.com reserves the right to pursue legal action, through which we may seek both compensatory and punitive damages. In addition, we may also pursue criminal charges where applicable.** The terms set forth herein are critical to the integrity of the BigCrumbs.com program and to the protection of participating members. As such, they shall be rigorously enforced.

**11. APPROVAL.** BigCrumbs.com reserves the right to disapprove any registration for any reason. In the event of disapproval, you may request the reason for our decision by using the "Contact Us" feature of the BigCrumbs.com website.

**12. SPAM.** BigCrumbs.com has a zero-tolerance policy with regard to SPAM (unsolicited e-mail or posting on third-party sites in violation of those sites' terms of service or spam policies). BigCrumbs.com does not endorse or support spam in the promotion of its services, and further believes such activity to be harmful to its reputation and business. Therefore, if we, in our sole discretion, determine that a member has willfully engaged in spamming, that member will be immediately terminated from the program, and will forfeit all rights granted by this agreement. Further, BigCrumbs.com may take legal action against the offending member.

**13. PROMOTION.** You understand that in addition to spam, certain types of promotion are prohibited, as follows:

1. Search engine promotion that includes keyword bidding on any featured retailer's name, brand names, or derivations thereof
2. Search engine promotion that includes ad text containing any featured retailer's name, brand names, or derivations thereof
3. Any promotion which seeks to present the member as a representative or agent of BigCrumbs.com or any of our featured retailers
4. Any promotion that includes the logos or other owned marks of BigCrumbs or featured retailers
5. Registering confusingly similar domain names or otherwise typo-squatting on the names of BigCrumbs.com or our featured retailers
6. Falsely representing BigCrumbs.com's program terms or otherwise misleading people
7. Any promotion that would reflect negatively on BigCrumbs.com or otherwise associate BigCrumbs.com with questionable moral themes

In addition, BigCrumbs.com prohibits promotion on certain websites or other "contexts", where a context is defined as a blog, forum, web page or other content medium. These include:

These are only guidelines and BigCrumbs.com reserves the right, in its sole judgement, to make exceptions and to decide which specific instances of promotion it will allow.

**14. CRUMBSHARES PROGRAM.** BigCrumbs.com offers the CrumbShares Program as an additional reward for loyal members. This program allows you to earn *additional credits* for the purchases you make through BigCrumbs.com, which earn cash back for you. These additional credits are known as CrumbShares and they do not reduce or otherwise affect the actual cash back that you earn.

For each dollar or fraction thereof of cash back that you earn through BigCrumbs.com, you will earn the equivalent number of CrumbShares. For example, \$10 in earned cash back will award you with ten (10) CrumbShares. You will also earn CrumbShares equivalent to ten percent (10%) of the cash back earned by all of your direct referrals. For example, if one of your direct referrals earns \$20 in cash back, then you will earn two (2) CrumbShares.

**Usage of CrumbShares:** In the event that BigCrumbs.com is purchased in whole by another entity, you may redeem your CrumbShares for a percentage of the cash portion of the sale amount, as follows:

1. BigCrumbs.com will set aside fifty percent (50%) of the net cash proceeds (minus associated legal and other expenses) to be shared among members who hold CrumbShares.
2. The percentage of the amount set aside to which you are entitled is equivalent to the percentage you hold of all CrumbShares held by members, as of the close of the day on which BigCrumbs.com executes an agreement with an acquiring entity.
3. BigCrumbs.com will pay all amounts owed under this program within 90 calendar days of the date the transaction closes and funds have settled to CrumbShares's account (whichever is greater).

**Additional Terms:** You understand that CrumbShares are not options, securities or equities, are non-transferrable and have no monetary value. You understand that the CrumbShares program represents only an agreement between you and BigCrumbs.com that provides you with a claim to a certain percentage, as set forth herein, of the net cash (not stock) proceeds of a completed purchase of BigCrumbs.com.

You understand that closure of your BigCrumbs.com account forfeits all of your CrumbShares. This program does not afford you with additional rights or claims on either BigCrumbs.com or any acquiring entity.

You understand that nothing in this agreement shall interfere with the right of BigCrumbs.com to refuse any purchase offer.

**15. OUR RESPONSIBILITIES.** We will provide you with links on the BigCrumbs.com website to the websites of our featured retailers. These links may include "default" links to the retailers' home pages, links to specific products on the retailers' websites, and special offers links to specific discount pages and other offer pages on the target retailers' websites.

In the event that any of these links are followed to a featured retailer's website, and you make a qualifying purchase during that same visit, you will receive cash-back in the amount specified by your membership type. We will make every reasonable effort to accurately track and report in a timely fashion, all purchases made through our website. However, you agree that you will not hold us liable for any technical failure, whether ours, yours, our merchant partner's, or other involved parties. You also acknowledge that if you have disabled cookies, JavaScript or other technologies used in tracking purchases, then it is technically infeasible for BigCrumbs.com to track such purchases and credit your account.

**IN NO WAY ARE FEATURED BIGCRUMBS.COM RETAILERS RESPONSIBLE FOR THE OPERATION OF THE BIGCRUMBS.COM PROGRAM, NOR ARE SAID RETAILERS OBLIGATED TO FURNISH PAYMENT TO BIGCRUMBS.COM MEMBERS. THIS AGREEMENT IS MADE ENTIRELY BETWEEN BIGCRUMBS.COM AND YOU, THE PARTICIPATING MEMBER.**

**16. LIMITATIONS AND EXCEPTIONS.** You understand that some purchases at our featured retailers' websites may not generate commissions. These include, but are not limited to gift certificates, gift cards and other items. BigCrumbs.com will make every effort to indicate when there are such exceptions, however, in no event shall BigCrumbs.com be obligated to pay either cash back or referral commissions for purchases that do not generate a marketing commission for BigCrumbs.com.

**17. DISCLAIMER OF WARRANTIES.** BigCrumbs.com MAKES NO, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER SUBJECT TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. BIGCRUMBS.COM MAKES NO WARRANTY THAT OPERATION OF THE BIGCRUMBS.COM SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE AND BIGCRUMBS.COM MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH BIGCRUMBS.COM'S FEATURED MERCHANTS' SITES OR ANY TRANSACTIONS ENTERED INTO BY WAY OF THE BIGCRUMBS.COM SITE. BIGCRUMBS.COM IS IN NO WAY INVOLVED WITH THE ORDER PROCESSING AND FULFILLMENT AT OUR FEATURED MERCHANTS' SITES.

**18. LIMITATION OF LIABILITY.** IN NO EVENT SHALL BIGCRUMBS.COM BE LIABLE FOR ANY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF DATA, OR EQUIPMENT DOWNTIME), EVEN IF BIGCRUMBS.COM KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BIGCRUMBS.COM'S TOTAL AGGREGATE LIABILITY FOR CLAIMS ARISING UNDER THIS AGREEMENT EXCEED THE CASH BACK AND REFERRAL COMMISSIONS EARNED BY YOU HEREUNDER.

**19. TERM AND TERMINATION.** This agreement will become active on the date that you open your account with BigCrumbs.com and may be terminated at any time by either party with or without cause by providing written notice to the other party. In the event that this agreement is terminated, you agree to remove all links and other promotional material related to BigCrumbs.com from any website that you may operate within two business days following the termination date. Further, BigCrumbs.com agrees to pay any outstanding commission due to you within ninety (90) days of the termination date or until your final purchase has exceeded the retailer's return policy expiration date, whichever is greater. You agree, that you will re-pay any outstanding balance that you owe BigCrumbs.com as a result of returns, exchanges and other debiting transactions for which we have already paid you within thirty (30) days of the termination date. In the event that a member has engaged in fraudulent activity, the member forfeits all earnings on all transactions and BigCrumbs.com may terminate the member's account without further obligation to that member. IN NO EVENT SHALL YOU BE LIABLE FOR ANY AMOUNT EXCEEDING THE AGGREGATE AMOUNT THAT BIGCRUMBS.COM HAS PAID TO YOU, EXCEPT AS INDICATED IF YOU ARE FOUND TO BE IN BREACH OF THIS AGREEMENT.

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**20. MODIFICATIONS.** BigCrums.com reserves the right to modify this agreement at any time. We will make every reasonable effort to contact you using the information that you provide to BigCrums.com in the event of changes, but in lieu of contacting you directly, we may advise you of modifications to this agreement by placing this information prominently on the BigCrums.com website. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING OUR POSTING OF A NEW AGREEMENT ON OUR SITE WILL CONSTITUTE YOUR BINDING ACCEPTANCE OF THE MODIFIED TERMS.

**21. GENERAL PROVISIONS.** You agree that BigCrums.com may use information regarding our relationship with you in our marketing and promotional efforts. This information includes payments made to you by BigCrums.com. We will not reveal your personal contact information and will only reference your state of residence and member name, unless we first obtain express-written permission from you. Either party may change its contact information from time to time upon written notice to the other party. No failure or delay in exercising, on the part of either party, any privilege, power or rights hereunder will operate as a waiver thereof. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of Georgia. Any action relating to this Agreement must be brought in the federal or state courts located in Atlanta, Georgia and you irrevocably consent to the jurisdiction of such courts. Any waivers or amendments shall be effective only if made in writing signed by a representative of the respective parties authorized to bind the parties. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

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The term "Etsy" is a trademark of Etsy, Inc. This application uses the Etsy API but is not endorsed or certified by Etsy, Inc.



*B*

# United States of America

United States Patent and Trademark Office

## EBATES

**Reg. No. 3,858,927**

**Registered Oct. 12, 2010**

**Int. Cls.: 35 and 36**

**SERVICE MARK**

**PRINCIPAL REGISTER**

EBATES SHOPPING.COM, INC. (CALIFORNIA CORPORATION)  
333 BRYANT ST. SUITE 250  
SAN FRANCISCO, CA 94107

FOR: ADMINISTERING A PROGRAM FOR ENABLING PARTICIPATING MEMBERS TO OBTAIN REBATES, DISCOUNTS, CASH-BACK, COUPONS, VOUCHERS AND SPECIAL OFFERS IN THE NATURE OF FREE SHIPPING, DOLLAR OR PERCENTAGE PRICE REDUCTIONS, FREE PRODUCTS OR SERVICES, ACCESS TO EXCLUSIVE OR LIMITED PRODUCTS AND SERVICES, AND LIMITED TIME OFFERS FOR PURCHASING THE PRODUCTS AND SERVICES OF THE PARTICIPATING BUSINESSES OF OTHERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-30-1999; IN COMMERCE 4-30-1999.

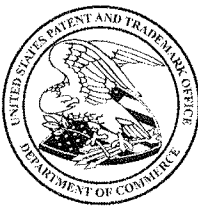
FOR: PROVIDING CASH AND OTHER REBATES FOR MAKING PURCHASES FROM OR APPLYING FOR A SERVICE OF PARTICIPATING STORES OR SERVICE PROVIDERS AS PART OF THE EBATES SHOPPING.COM, INC.'S CUSTOMER LOYALTY PROGRAM, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-30-1999; IN COMMERCE 4-30-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

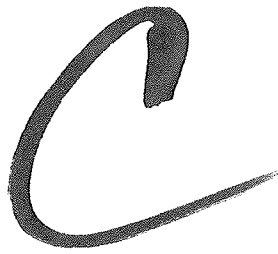
SER. NO. 77-783,151, FILED 7-16-2009.

RONALD DELGIZZI, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

A large, handwritten capital letter 'C' in black ink, centered on the page. The letter is formed with a single stroke, starting from the top right, curving counter-clockwise, and ending with a small hook at the top right.

# United States of America

United States Patent and Trademark Office

## EBATES

**Reg. No. 3,858,928**

**Registered Oct. 12, 2010**

**Int. Cl.: 35**

**SERVICE MARK**

**PRINCIPAL REGISTER**

EBATES SHOPPING.COM, INC. (CALIFORNIA CORPORATION)  
333 BRYANT ST. SUITE 250  
SAN FRANCISCO, CA 94107

FOR: ADVERTISING AND MARKETING SERVICES, NAMELY, PROMOTING THE GOODS AND SERVICES OF OTHERS; CUSTOMER LOYALTY SERVICES AND CUSTOMER CLUB SERVICES, FOR COMMERCIAL, PROMOTIONAL AND/OR ADVERTISING PURPOSES; ADMINISTRATION OF A PROGRAM FOR ENABLING PARTICIPANTS TO OBTAIN DISCOUNTS ON GOODS AND SERVICES AND RECEIVE IMPROVED GOODS AND SERVICES; MEMBERSHIP CLUB SERVICES PROVIDING DISCOUNTS AND PROCESSING REBATES FOR THE GOODS AND SERVICES OF OTHERS; PROMOTING THE GOODS AND SERVICES OF OTHERS BY PROVIDING A WEB SITE FEATURING COUPONS, REBATES, VOUCHERS, PRICE-COMPARISON INFORMATION, PRODUCT REVIEWS, LINKS TO THE RETAIL WEB SITES OF OTHERS, AND DISCOUNT INFORMATION; PROMOTING THE GOODS AND SERVICES OF OTHERS, NAMELY, PROVIDING INFORMATION REGARDING DISCOUNTS, COUPONS, REBATES, VOUCHERS AND SPECIAL OFFERS FOR THE GOODS AND SERVICES OF OTHERS VIA THE EBATES SHOPPING.COM, INC. WEB SITE AND A NETWORK OF AFFILIATED WEB SITES, VIA BLOGS, VIA ON-LINE SOCIAL NETWORKS AND VIA MOBILE DEVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-30-1999; IN COMMERCE 4-30-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

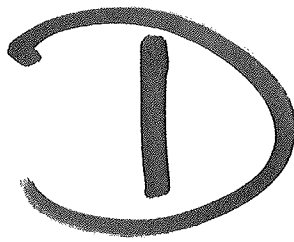
SER. NO. 77-783,152, FILED 7-16-2009.

RONALD DELGIZZI, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office



# United States of America

United States Patent and Trademark Office

## EBATES

**Reg. No. 3,852,239**

**Registered Sep. 28, 2010**

**Int. Cl.: 9**

**TRADEMARK**

**PRINCIPAL REGISTER**

EBATES SHOPPING.COM, INC. (CALIFORNIA CORPORATION)  
333 BRYANT ST. SUITE 250  
SAN FRANCISCO, CA 94107

FOR: CONSUMER COUPONS DOWNLOADED FROM A GLOBAL COMPUTER NETWORK,  
IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-30-2009; IN COMMERCE 6-30-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-783,150, FILED 7-16-2009.

RONALD DELGIZZI, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

A large, stylized handwritten letter 'E' in black ink, centered on the page. The letter is formed with a single continuous stroke, starting from the bottom left, curving upwards and to the right, then back down and to the left, and finally a horizontal stroke across the top.

# Trademark/Service Mark Application, Principal Register

Serial Number: 85803578

Filing Date: 12/14/2012

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85803578
<b>MARK INFORMATION</b>	
*MARK	\\TICRS\EXPORT16\IMAGEOUT 16\858\035\85803578\xml\APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of Image of a man in a bow tie emerging from a circle, holding a stack of cash.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	500 x 500
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	EBATES PERFORMANCE MARKETING, INC.
*STREET	333 BRYANT STREET, SUITE 250
*CITY	San Francisco
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL	



<b>CODE</b> (Required for U.S. applicants only)	94107
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**LEGAL ENTITY INFORMATION**

<b>TYPE</b>	corporation
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<b>STATE/COUNTRY OF INCORPORATION</b>	Delaware
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**GOODS AND/OR SERVICES AND BASIS INFORMATION**

<b>INTERNATIONAL CLASS</b>	009
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<b>* IDENTIFICATION</b>	CONSUMER COUPONS DOWNLOADED FROM A GLOBAL COMPUTER NETWORK
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<b>FILING BASIS</b>	SECTION 1(a)
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<b>FIRST USE ANYWHERE DATE</b>	At least as early as 03/27/2002
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<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 03/27/2002
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**SPECIMEN FILE NAME(S)**

<b>ORIGINAL PDF FILE</b>	<u>SPE0-17316415141-190314543 . MAX_CASH_Specimen.pdf</u>
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<b>CONVERTED PDF FILE(S) (1 page)</b>	<u>\\TICRS\EXPORT16\IMAGEOUT16\858\035\85803578\xml1\APP0003.JPG</u>
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<b>SPECIMEN DESCRIPTION</b>	Page from Applicant's website
---------------------------------	-------------------------------

**ATTORNEY INFORMATION**

<b>NAME</b>	Tsan Abrahamson
-------------	-----------------

<b>ATTORNEY DOCKET NUMBER</b>	eBates/Max Cash Logo Design/U.S. Cl. 9
---------------------------------------	--

<b>FIRM NAME</b>	Cobalt LLP
------------------	------------

<b>STREET</b>	918 Parker Street Building A21
---------------	--------------------------------

<b>CITY</b>	Berkeley
-------------	----------

<b>STATE</b>	California
--------------	------------

<b>COUNTRY</b>	United States
----------------	---------------

<b>ZIP/POSTAL CODE</b>	94710
----------------------------	-------

<b>EMAIL ADDRESS</b>	trademarks@cobaltlaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Sophie Cohen, Barbara Friedman, Shabnam Malek and Katherine Spelman.
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Tsan Abrahamson
<b>FIRM NAME</b>	Cobalt LLP
<b>STREET</b>	918 Parker Street Building A21
<b>CITY</b>	Berkeley
<b>STATE</b>	California
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	94710
<b>EMAIL ADDRESS</b>	trademarks@cobaltlaw.com;sophie@cobaltlaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/Ken Hirschman/
<b>SIGNATORY'S NAME</b>	Ken Hirschman
<b>SIGNATORY'S POSITION</b>	Vice President Strategic Alliances
<b>DATE SIGNED</b>	12/14/2012

## Trademark/Service Mark Application, Principal Register

**Serial Number: 85803578**

**Filing Date: 12/14/2012**

### To the Commissioner for Trademarks:

**MARK:** (Stylized and/or Design, see mark)

The applicant is not claiming color as a feature of the mark. The mark consists of Image of a man in a bow tie emerging from a circle, holding a stack of cash.

The applicant, EBATES PERFORMANCE MARKETING, INC., a corporation of Delaware, having an address of

333 BRYANT STREET, SUITE 250  
San Francisco, California 94107  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: CONSUMER COUPONS DOWNLOADED FROM A GLOBAL  
COMPUTER NETWORK

In International Class 009, the mark was first used by the applicant or the applicant's related company or licensee at least as early as 03/27/2002, and first used in commerce at least as early as 03/27/2002, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Page from Applicant's website.

### Original PDF file:

SPE0-17316415141-190314543 . MAX\_CASH\_Specimen.pdf

### Converted PDF file(s) (1 page)

Specimen File1

### The applicant's current Attorney Information:

Tsan Abrahamson and Sophie Cohen, Barbara Friedman, Shabnam Malek and Katherine Spelman. of  
Cobalt LLP

918 Parker Street Building A21  
Berkeley, California 94710  
United States

The attorney docket/reference number is eBates/Max Cash Logo Design/U.S. Cl. 9.

The applicant's current Correspondence Information:

Tsan Abrahamson

Cobalt LLP

918 Parker Street Building A21

Berkeley, California 94710

trademarks@cobaltlaw.com;sophie@cobaltlaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Ken Hirschman/ Date Signed: 12/14/2012

Signatory's Name: Ken Hirschman

Signatory's Position: Vice President Strategic Alliances

RAM Sale Number: 7443

RAM Accounting Date: 12/17/2012

Serial Number: 85803578

Internet Transmission Date: Fri Dec 14 20:14:26 EST 2012

TEAS Stamp: USPTO/BAS-173.164.151.41-201212142014265

82877-85803578-4901d1b8c9a725bb6fe8e46c8

4a71d45bc3-DA-7443-20121214190314543109








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F

TM Fee: \$475 (Base Fee)  
 (TM Fee: \$575, if 10 or more classes)

# Trademark/Service Mark Application, Principal Register

**Serial Number: 85803579**

**Filing Date: 12/14/2012**

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85803579
<b>MARK INFORMATION</b>	
*MARK	WTICRS\EXPORT\6VMAGEOUT 16\858\035\85803579\xml\APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the image of a man in a bow tie emerging from a circle holding a stack of cash.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	500 x 500
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	EBATES PERFORMANCE MARKETING, INC.
*STREET	333 BRYANT STREET, SUITE 250
*CITY	San Francisco
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL	



<b>CODE</b> (Required for U.S. applicants only)	94107
---	-------

**LEGAL ENTITY INFORMATION**

<b>TYPE</b>	corporation
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<b>STATE/COUNTRY OF INCORPORATION</b>	Delaware
---	----------

**GOODS AND/OR SERVICES AND BASIS INFORMATION**

<b>INTERNATIONAL CLASS</b>	035
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\* **IDENTIFICATION**

ADMINISTERING A PROGRAM FOR ENABLING PARTICIPATING MEMBERS TO OBTAIN REBATES, DISCOUNTS, CASH-BACK, COUPONS, VOUCHERS AND SPECIAL OFFERS IN THE NATURE OF FREE SHIPPING, DOLLAR OR PERCENTAGE PRICE REDUCTIONS, FREE PRODUCTS OR SERVICES, ACCESS TO EXCLUSIVE OR LIMITED PRODUCTS AND SERVICES, AND LIMITED TIME OFFERS FOR PURCHASING THE PRODUCTS AND SERVICES OF THE PARTICIPATING BUSINESSES OF OTHERS; ADVERTISING AND MARKETING SERVICES, NAMELY, PROMOTING THE GOODS AND SERVICES OF OTHERS; CUSTOMER LOYALTY SERVICES AND CUSTOMER CLUB SERVICES, FOR COMMERCIAL, PROMOTIONAL AND/OR ADVERTISING PURPOSES; ADMINISTRATION OF A PROGRAM FOR ENABLING PARTICIPANTS TO OBTAIN DISCOUNTS ON GOODS AND SERVICES AND RECEIVE IMPROVED GOODS AND SERVICES; MEMBERSHIP CLUB SERVICES PROVIDING DISCOUNTS AND PROCESSING REBATES FOR THE GOODS AND SERVICES OF OTHERS; PROMOTING THE GOODS AND SERVICES OF OTHERS BY PROVIDING A WEB SITE FEATURING COUPONS, REBATES, VOUCHERS, PRICE-COMPARISON INFORMATION, PRODUCT REVIEWS, LINKS TO THE RETAIL WEB SITES OF OTHERS, AND DISCOUNT INFORMATION; PROMOTING THE GOODS AND SERVICES OF OTHERS, NAMELY, PROVIDING INFORMATION REGARDING DISCOUNTS, COUPONS, REBATES, VOUCHERS AND SPECIAL OFFERS FOR THE GOODS AND SERVICES OF OTHERS VIA THE EBATES WEB SITE AND A NETWORK OF AFFILIATED WEB SITES, VIA BLOGS, VIA ON-LINE SOCIAL NETWORKS AND VIA MOBILE DEVICES.

<b>FILING BASIS</b>	SECTION 1(a)
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<b>FIRST USE ANYWHERE DATE</b>	At least as early as 03/27/2002
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<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 03/27/2002
---	---------------------------------

<b>SPECIMEN FILE NAME(S)</b>	
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<b>ORIGINAL PDF FILE</b>	<u>SPE0-17316415141-191222169 . MAX CASH Specimen.pdf</u>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<u>\\TICRS\EXPORT\6\IMAGEOUT\6\858\035\85803579\xml\1\APP0003.JPG</u>
<b>SPECIMEN DESCRIPTION</b>	A page from Applicant's website.

**ATTORNEY INFORMATION**

<b>NAME</b>	Tsan Abrahamson
<b>ATTORNEY DOCKET NUMBER</b>	eBates/Max Cash Logo Design/U.S. Cl. 35
<b>FIRM NAME</b>	Cobalt LLP
<b>STREET</b>	918 Parker Street Building A21
<b>CITY</b>	Berkeley
<b>STATE</b>	California
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	94710
<b>EMAIL ADDRESS</b>	trademarks@cobaltlaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Sophie Cohen, Barbara Friedman, Shabnam Malek and Katherine Spelman.

**CORRESPONDENCE INFORMATION**

<b>NAME</b>	Tsan Abrahamson
<b>FIRM NAME</b>	Cobalt LLP
<b>STREET</b>	918 Parker Street Building A21
<b>CITY</b>	Berkeley
<b>STATE</b>	California
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	94710
<b>EMAIL ADDRESS</b>	trademarks@cobaltlaw.com;sophie@cobaltlaw.com
<b>AUTHORIZED TO</b>	

**COMMUNICATE  
VIA EMAIL**

Yes

**FEE INFORMATION****NUMBER OF  
CLASSES**

1

**FEE PER CLASS**

325

**\*TOTAL FEE DUE**

325

**\*TOTAL FEE  
PAID**

325

**SIGNATURE INFORMATION****SIGNATURE**

/Ken Hirschman/

**SIGNATORY'S  
NAME**

Ken Hirschman

**SIGNATORY'S  
POSITION**

Vice President Strategic Alliances

**DATE SIGNED**

12/14/2012

## Trademark/Service Mark Application, Principal Register

**Serial Number: 85803579**

**Filing Date: 12/14/2012**

### To the Commissioner for Trademarks:

**MARK:** (Stylized and/or Design, see mark)

The applicant is not claiming color as a feature of the mark. The mark consists of the image of a man in a bow tie emerging from a circle holding a stack of cash.

The applicant, EBATES PERFORMANCE MARKETING, INC., a corporation of Delaware, having an address of

333 BRYANT STREET, SUITE 250  
San Francisco, California 94107  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: ADMINISTERING A PROGRAM FOR ENABLING PARTICIPATING MEMBERS TO OBTAIN REBATES, DISCOUNTS, CASH-BACK, COUPONS, VOUCHERS AND SPECIAL OFFERS IN THE NATURE OF FREE SHIPPING, DOLLAR OR PERCENTAGE PRICE REDUCTIONS, FREE PRODUCTS OR SERVICES, ACCESS TO EXCLUSIVE OR LIMITED PRODUCTS AND SERVICES, AND LIMITED TIME OFFERS FOR PURCHASING THE PRODUCTS AND SERVICES OF THE PARTICIPATING BUSINESSES OF OTHERS; ADVERTISING AND MARKETING SERVICES, NAMELY, PROMOTING THE GOODS AND SERVICES OF OTHERS; CUSTOMER LOYALTY SERVICES AND CUSTOMER CLUB SERVICES, FOR COMMERCIAL, PROMOTIONAL AND/OR ADVERTISING PURPOSES; ADMINISTRATION OF A PROGRAM FOR ENABLING PARTICIPANTS TO OBTAIN DISCOUNTS ON GOODS AND SERVICES AND RECEIVE IMPROVED GOODS AND SERVICES; MEMBERSHIP CLUB SERVICES PROVIDING DISCOUNTS AND PROCESSING REBATES FOR THE GOODS AND SERVICES OF OTHERS; PROMOTING THE GOODS AND SERVICES OF OTHERS BY PROVIDING A WEB SITE FEATURING COUPONS, REBATES, VOUCHERS, PRICE-COMPARISON INFORMATION, PRODUCT REVIEWS, LINKS TO THE RETAIL WEB SITES OF OTHERS, AND DISCOUNT INFORMATION; PROMOTING THE GOODS AND SERVICES OF OTHERS, NAMELY, PROVIDING INFORMATION REGARDING DISCOUNTS, COUPONS, REBATES, VOUCHERS AND SPECIAL OFFERS FOR THE GOODS AND SERVICES OF OTHERS VIA THE EBATES WEB SITE AND A NETWORK OF AFFILIATED WEB SITES, VIA BLOGS, VIA ON-LINE SOCIAL NETWORKS AND VIA MOBILE DEVICES.

In International Class 035, the mark was first used by the applicant or the applicant's related company or licensee at least as early as 03/27/2002, and first used in commerce at least as early as 03/27/2002, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in

commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n)  
A page from Applicant's website..

**Original PDF file:**

SPE0-17316415141-191222169 . MAX CASH Specimen.pdf

**Converted PDF file(s) (1 page)**

Specimen File1

**The applicant's current Attorney Information:**

Tsan Abrahamson and Sophie Cohen, Barbara Friedman, Shabnam Malek and Katherine Spelman. of  
Cobalt LLP

918 Parker Street Building A21

Berkeley, California 94710

United States

The attorney docket/reference number is eBates/Max Cash Logo Design/U.S. Cl. 35.

**The applicant's current Correspondence Information:**

Tsan Abrahamson

Cobalt LLP

918 Parker Street Building A21

Berkeley, California 94710

trademarks@cobaltlaw.com;sophie@cobaltlaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1  
class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Ken Hirschman/ Date Signed: 12/14/2012

Signatory's Name: Ken Hirschman

Signatory's Position: Vice President Strategic Alliances

RAM Sale Number: 7459

RAM Accounting Date: 12/17/2012

Serial Number: 85803579

Internet Transmission Date: Fri Dec 14 20:15:55 EST 2012

TEAS Stamp: USPTO/BAS-173.164.151.41-201212142015552

69997-85803579-490c3d2db5cfb7dfe56ac478e

fdf7e94e-DA-7459-20121214191222169209





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A large, stylized, handwritten letter 'G' in a dark grey or black ink. The letter is cursive, with a thick stroke and a small loop at the top. It is centered on the page.

# Trademark/Service Mark Application, Principal Register

Serial Number: 85803580

Filing Date: 12/14/2012

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85803580
<b>MARK INFORMATION</b>	
*MARK	\\TICRS\EXPORT\16\IMAGEOUT\16\858\035\85803580\xml\1\APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the image of a man in a bow tie emerging from a circle holding a stack of cash.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	500 x 500
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	EBATES PERFORMANCE MARKETING, INC.
*STREET	333 BRYANT STREET, SUITE 250
*CITY	San Francisco
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL	

<b>CODE</b> (Required for U.S. applicants only)	94107
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	corporation
<b>STATE/COUNTRY OF INCORPORATION</b>	Delaware
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	036
<b>* IDENTIFICATION</b>	PROVIDING CASH AND OTHER REBATES FOR MAKING PURCHASES FROM OR APPLYING FOR A SERVICE OF PARTICIPATING STORES OR SERVICE PROVIDERS AS PART OF THE EBATES CUSTOMER LOYALTY PROGRAM.
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 03/27/2002
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 03/27/2002
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<u>SPE0-17316415141-192706922 , MAX CASH Specimen.pdf</u>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<u>\\TICRS\EXPORT\16\IMAGEOUT\16\858\035\85803580\xml\1\APP0003.JPG</u>
<b>SPECIMEN DESCRIPTION</b>	a page from Applicant's website.
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Tsan Abrahamson
<b>ATTORNEY DOCKET NUMBER</b>	eBates/Max Cash Logo Design/U.S. Cl. 36
<b>FIRM NAME</b>	Cobalt LLP
<b>STREET</b>	918 Parker Street Building A21
<b>CITY</b>	Berkeley
<b>STATE</b>	California
<b>COUNTRY</b>	United States

<b>ZIP/POSTAL CODE</b>	94710
<b>EMAIL ADDRESS</b>	trademarks@cobaltlaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Sophie Cohen, Barbara Friedman, Shabnam Malek and Barbara Friedman.
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Tsan Abrahamson
<b>FIRM NAME</b>	Cobalt LLP
<b>STREET</b>	918 Parker Street Building A21
<b>CITY</b>	Berkeley
<b>STATE</b>	California
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	94710
<b>EMAIL ADDRESS</b>	trademarks@cobaltlaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/Ken Hirschman/
<b>SIGNATORY'S NAME</b>	Ken Hirschman
<b>SIGNATORY'S POSITION</b>	Vice President Strategic Alliances
<b>DATE SIGNED</b>	12/14/2012

Case 4:12-cv-06488-YGR Document 1-1 Filed 12/21/12 Page 58 of 78

## Trademark/Service Mark Application, Principal Register

**Serial Number: 85803580**

**Filing Date: 12/14/2012**

### To the Commissioner for Trademarks:

**MARK:** (Stylized and/or Design, see mark)

The applicant is not claiming color as a feature of the mark. The mark consists of the image of a man in a bow tie emerging from a circle holding a stack of cash.

The applicant, EBATES PERFORMANCE MARKETING, INC., a corporation of Delaware, having an address of

333 BRYANT STREET, SUITE 250  
San Francisco, California 94107  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 036: PROVIDING CASH AND OTHER REBATES FOR MAKING PURCHASES FROM OR APPLYING FOR A SERVICE OF PARTICIPATING STORES OR SERVICE PROVIDERS AS PART OF THE EBATES CUSTOMER LOYALTY PROGRAM.

In International Class 036, the mark was first used by the applicant or the applicant's related company or licensee at least as early as 03/27/2002, and first used in commerce at least as early as 03/27/2002, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) a page from Applicant's website..

### Original PDF file:

SPE0-17316415141-192706922 . MAX CASH Specimen.pdf

### Converted PDF file(s) (1 page)

Specimen File1

The applicant's current Attorney Information:

Tsan Abrahamson and Sophie Cohen, Barbara Friedman, Shabnam Malek and Barbara Friedman. of Cobalt LLP

918 Parker Street Building A21  
Berkeley, California 94710  
United States

The attorney docket/reference number is eBates/Max Cash Logo Design/U.S. Cl. 36.

The applicant's current Correspondence Information:

Tsan Abrahamson  
Cobalt LLP  
918 Parker Street Building A21  
Berkeley, California 94710  
trademarks@cobaltlaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Ken Hirschman/ Date Signed: 12/14/2012  
Signatory's Name: Ken Hirschman  
Signatory's Position: Vice President Strategic Alliances

RAM Sale Number: 7467  
RAM Accounting Date: 12/17/2012

Serial Number: 85803580  
Internet Transmission Date: Fri Dec 14 20:16:50 EST 2012  
TEAS Stamp: USPTO/BAS-173.164.151.41-201212142016500  
80409-85803580-4903a6ca5b3ccdb6fd1963fb8  
d5141099-DA-7467-20121214192706922857





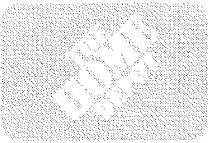




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### 1 Select Your Gift Card Bonus\*

				
<small>Choose your gift card bonus.</small>	<small>Choose your gift card bonus.</small>	<small>Choose your gift card bonus.</small>	<small>Choose your gift card bonus.</small>	<small>Choose your gift card bonus.</small>
\$10	\$10	\$10	\$10	\$5

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as seen in:

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CNN

Good Housekeeping

THE WALL STREET JOURNAL

## Why You Should Join

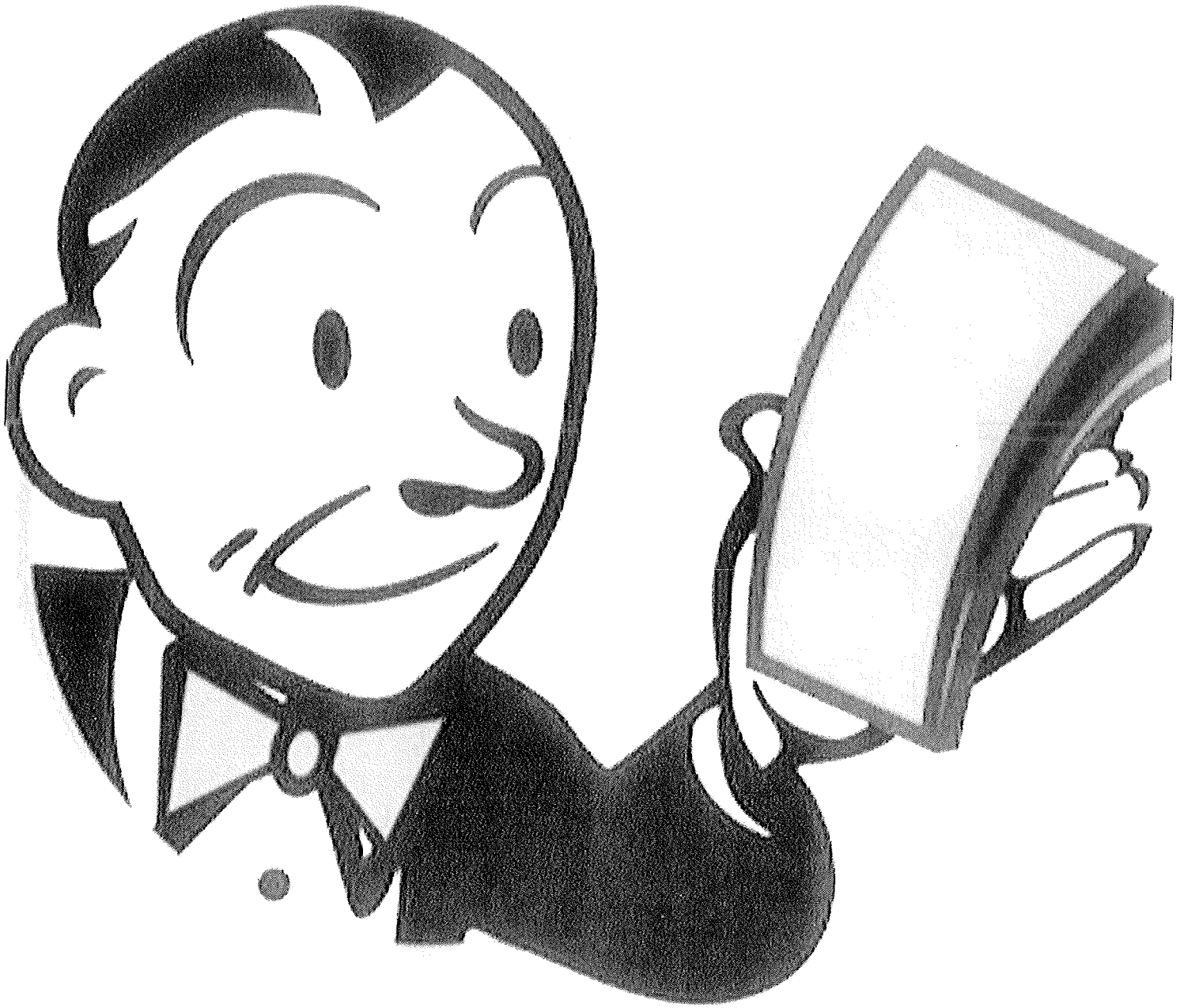
Get cash back at any of 1,500 stores any time you visit your shopping trip at Ebates.com. There are no points to redeem, no forms to mail in, and no fees. Ebates.com® Ebates a sales commission for sending shoppers to our sites. And Ebates uses the commission to pay you cash back. All we need is an email address so we can notify you when your cash back has been credited. To date, our members have already earned more than \$100,000,000 and you can join them today.

By becoming a member, you agree to our Terms & Conditions.

\* Cash Card earned after first \$25 purchase.

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**\*-APPLICATION-\***

**Title**

Title of Work: Max Cash  
Previous or Alternative Title: Max Cash Character Mark  
Max Cash holding a stack of cash

**Completion/Publication**

Year of Completion: 2001  
Date of 1st Publication: March 27, 2002      Nation of 1st Publication: United States

**Author**

Author: Sam Urton  
Author Created: 2-D artwork  
Citizen of: United States      Domiciled in: United States  
Year Born: 1967

**Copyright claimant**

Copyright Claimant: Ebates Performance Marketing, Inc.  
333 Bryant Street, Suite 250, San Francisco, CA, 94107, United States  
Transfer Statement: By written agreement

**Certification**

Name: Ken Hirschman, Vice-President  
Date: December 19, 2012  
Applicant's Tracking Number: Ebates/Max Cash Copyright Appl

Registration #:

Service Request #: 1-866491421

Priority: Special Handling

Application Date: December 19, 2012 12:45:09 AM

**Correspondent** \_\_\_\_\_

Organization Name: Cobalt LLP

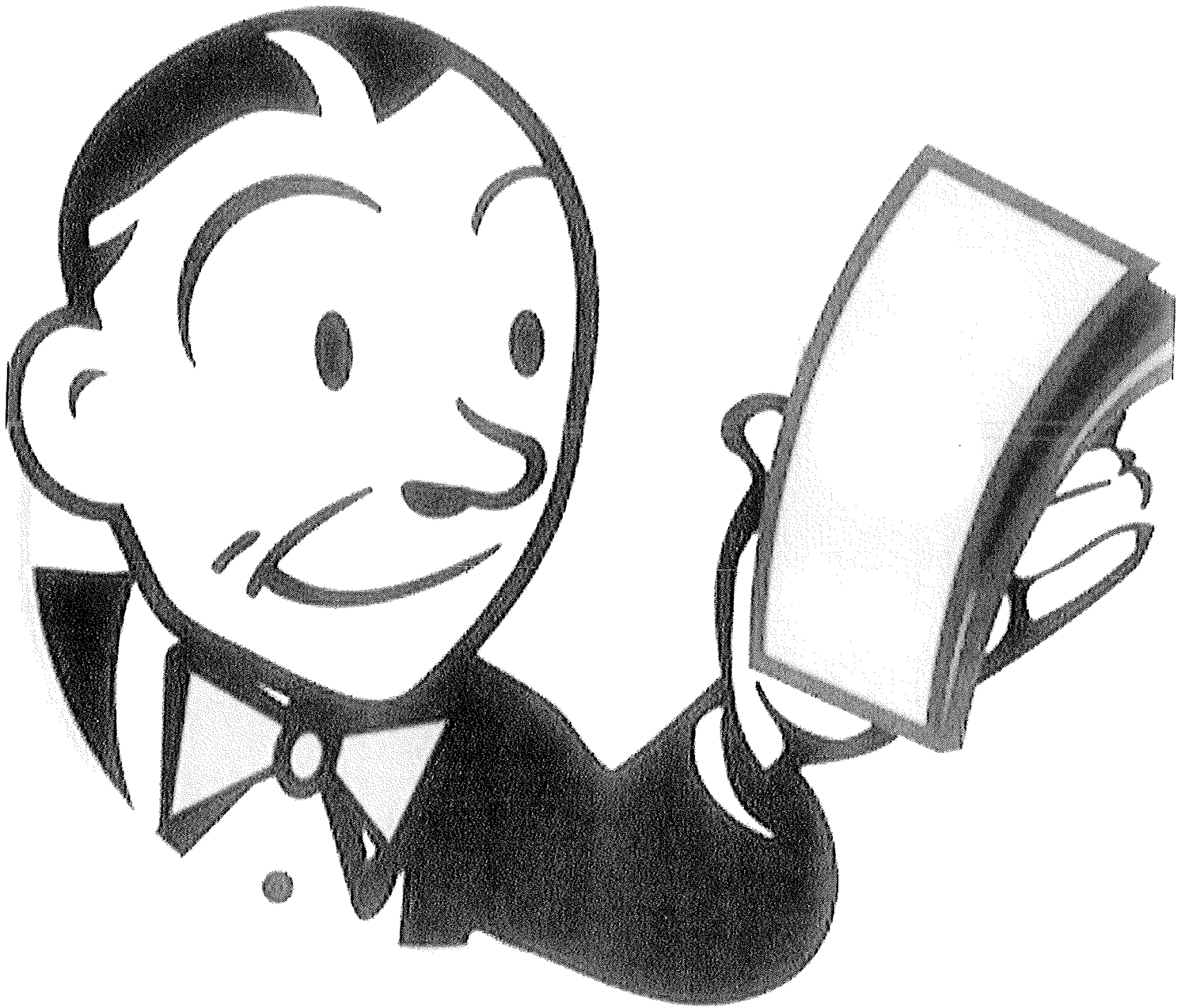
Name: Sophie Cohen

Email: trademarks@cobaltlaw.com

Address: 918 Parker street  
Building A21  
Berkeley, CA 94710 United States

**Mail Certificate** \_\_\_\_\_

Cobalt LLP  
Sophie Cohen  
918 Parker street  
Building A21  
Berkeley, CA 94710 United States



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**\*-APPLICATION-\***

**Title**

Title of Work: Max Cash "Local Deals"  
Previous or Alternative Title: Max Cash Original Image

**Completion/Publication**

Year of Completion: 2011  
Date of 1st Publication: February 1, 2011      Nation of 1st Publication: United States

**Author**

Author: Ebates Performance Marketing, Inc.  
Author Created: 2-D artwork  
Work made for hire: Yes  
Domiciled in: United States

**Copyright claimant**

Copyright Claimant: Ebates Performance Marketing, Inc.  
333 Bryant Street, Suite 250, San Francisco, CA, 94107

**Limitation of copyright claim**

Material excluded from this claim: text, 2-D artwork, Previous "Max Cash" artwork  
New material included in claim: 2-D artwork, Revisions and additions throughout

**Certification**

Name: Ken Hirschman, Vice-President  
Date: December 18, 2012  
Applicant's Tracking Number: Ebates/Max Cash "Local Deals"

Registration #:

Service Request #: 1-866491448

Priority: Special Handling

Application Date: December 18, 2012 11:44:06 PM

**Correspondent:** \_\_\_\_\_

Organization Name: Cobalt LLP

Name: Sophie Cohen

Email: trademarks@cobaltlaw.com

Address: 918 Parker street  
Building A21  
Berkeley, CA 94710 United States

**Mail Certificate** \_\_\_\_\_

Cobalt LLP  
Sophie Cohen  
918 Parker street  
Building A21  
Berkeley, CA 94710 United States



K



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BigCrumbs vs. Ebates

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### Cash Back Shopping Your Way.

BigCrumbs offers BIG cash back at your favorite stores. Just join, click to shop, and save!

### How it works

- 1 Join BigCrumbs
- 2 Shop As Usual
- 3 Get Paid Monthly

Join BigCrumbs. It's FREE



## Ebates Members: BigCrumbs Gives You M-O-R-E!

Higher cash back, tracking guarantee, BIG referral commissions, faster pay, and more!



### Sale! Get Bonus Cash Back At These Stores!



Coupons.com

up to \$10.50 cash back

Coupons.com is the undisputed leader in providing deal-seeking consumers with the best printable coupons.



drugstore.com

up to 7% cash back

The largest online drugstore and pharmacy



LeChateau

7% cash back

Contemporary fashion apparel, accessories &amp; footwear at value pricing for style-conscious women &amp; men of all ages



My Jewelry Box

10.5% cash back 7%

For all your special occasions, holiday shopping and everyday gifts, we invite you to shop MyJewelryBox.com to receive the finest top-quality jewelry at unbeatable prices

### New & Featured!

[Featured Retailers](#)[Newest Retailers](#)[Newest Member Stores](#)

LANDS' END

Lands' End

up to 5.6% cash back 2-8%

Lands' End is a classic American lifestyle brand with a passion for quality, legendary service, real value and a simple two-word promise to stand behind everything it sells. Guaranteed Period

livingsocial

LivingSocial

up to 7% cash back

With new and diverse offerings each day, we encourage our members to discover everything from family aquarium outings to weekend excursions to exclusive gourmet dinners and more

SEPHORA

Sephora.com

8% cash back 4-9%

Cosmetics, fragrances, haircare and more. Over 13,000 products from your favorite brands



Limoges Jewelry

11.9% cash back 40-6%

Limoges Jewelry offers custom-crafted, personalized jewelry designs at prices that you'll find hard to believe

### Browse Stores

Online Retailers

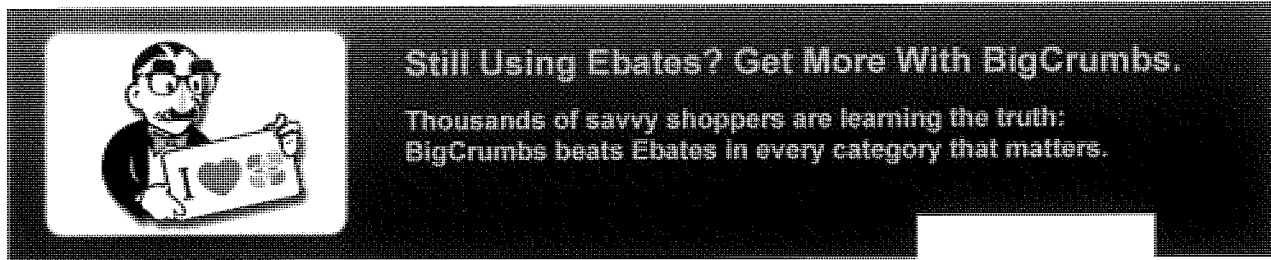
Art, Hobbies & Collectibles  
AutoGrocery  
Halloween

The Body Shop

10% cash back 5-6%

The Body Shop believes that there is only one way to beautiful? Nature's Way.

L



## More Cash Back, Faster Pay, Tracking Guarantee, and more...

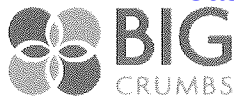
BigCrumbs was built on the promise of giving you more. Much more. Not only do we consistently give you the highest overall rebates, we also make you a profit-sharing partner for life.

	BigCrumbs	Ebates
<b>Number of Stores</b>	1500+	1500+
<b>Company Mission (more)</b>	Share company growth and profits with members	"Standard" corporate profit machine that puts its investors first.
<b>Highest Overall Cash Back (more)</b>	✓	-
<b>Tracking Guarantee (more)</b>	✓	-
<b>Community Deal Sharing</b>	✓	-
<b>Referral Program (more)</b>	Pays forever each time your referrals shop. Unlimited Potential.	Pays small one-time fee only on select referrals
<b>Payment Frequency (more)</b>	Monthly (get paid 3x faster)	Every 3 months
<b>Payment Minimum (more)</b>	\$1.00	\$5.01
<b>Site Designed</b>	21st Century	Circa 1917 :)

BigCrumbs consistently pays higher cash back as well as generous lifetime commissions for referring friends. Each month, our members save on millions of dollars in purchases at top stores, and over the last 7+ years, we've paid our members millions of dollars in cash back and commissions.

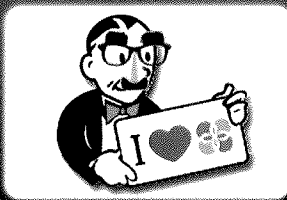
Remember, you can earn even more money when you refer friends and help them save with BigCrumbs! [LEARN MORE](#)





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Thousands of savvy shoppers are learning the truth:  
BigCrumbs beats Ebates in every category that matters.

## More Cash Back, Faster Pay, Tracking Guarantee, and more...

BigCrumbs was built on the promise of giving you more. Much more. Not only do we consistently give you the highest overall rebates, we also make you a profit-sharing partner for life.

	BigCrumbs	Ebates
<b>Number of Stores</b>	1500+	1500+
<b>Company Mission (more)</b>	Share company growth and profits with members	"Standard" corporate profit machine that puts its investors first.
<b>Highest Overall Cash Back (less)</b>	✓	-
<b>Highest Cash Back</b>	<p>BigCrumbs consistently gives you more cash back than Ebates. At any given time, we offer higher cash back at over 70% of merchants in common. And in many other cases we offer the same or only slightly less. We don't just give you the occasional "bonus cash back" or "cash back sales" requiring you to continuously check rates. Instead, we simply and consistently give you more.</p> <p>But that's not to say that we don't also offer the occasional awesome sale to sweeten your savings even further.</p> <p>So when you do all of your shopping through BigCrumbs, you'll save more with less work. Period.</p>	
<b>Tracking Guarantee (more)</b>	✓	-
<b>Community Deal Sharing</b>	✓	-
<b>Referral Program (more)</b>	Pays forever each time your referrals shop. Unlimited Potential.	Pays small one-time fee only on select referrals
<b>Payment Frequency (more)</b>	Monthly (get paid 3x faster)	Every 3 months
<b>Payment Minimum (more)</b>	\$1.00	\$5.01
<b>Site Designed</b>	21st Century	Circa 1917 :)

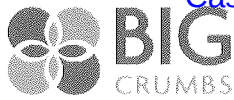
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Remember, you can earn even more money when you refer friends and help them save with BigCrumbs! [LEARN MORE](#)

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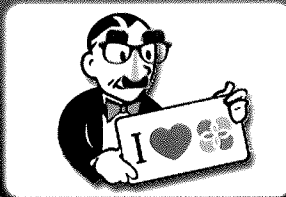
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BigCrumbs was built on the promise of giving you more. Much more. Not only do we consistently give you the highest overall rebates, we also make you a profit-sharing partner for life.

	BigCrumbs	Ebates
Number of Stores	1500+	1500+
Company Mission (more)	Share company growth and profits with members	"Standard" corporate profit machine that puts its investors first.
Highest Overall Cash Back (more)	99%	-
Tracking Guarantee (less)	99%	-
Tracking Guarantee		
The overwhelming majority of your purchases will credit automatically as intended. But it's a fact of life that tracking issues can happen - whether here or at Ebates.		
But the difference is that BigCrumbs guarantees that if you click through just prior to shopping and the purchase fails to credit automatically for UNKNOWABLE reasons, we will provide you with the credit you deserve as a member courtesy.		
It's just one more way that BigCrumbs puts members first!		
Free rebates paid out when the Tracking Guarantee is exceeded. 100% of rebates not credited, cashed instantly.		
Community Deal Sharing	99%	-
Referral Program (more)	Pays forever each time your referrals shop. Unlimited Potential.	Pays small one-time fee only on select referrals
Payment Frequency (more)	Monthly (get paid 3x faster)	Every 3 months
Payment Minimum (more)	\$1.00	\$5.01
Site Designed	21st Century	Circa 1917 :)

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Remember, you can earn even more money when you refer friends and help them save with BigCrumbs! [LEARN MORE](#)